

REMARKS

Reconsideration of the application is requested.

Claims 18-40 remain in the application. Claims 18-24, 26-28, and 30-40 are subject to examination and claims 25 and 29 have been withdrawn from examination. Claims 18-20, 23, 26-28, 36, 37, and 40 have been amended.

Under the heading “Claim Rejections – 35 USC § 112” on page 2 of the above-identified Office Action, claims 18-24, 26-28, and 30-40 have been rejected as failing to comply with the enablement requirement under 35 U.S.C. § 112, first paragraph.

Claims 18, 23, 26, and 27 have been amended to specify that an amplitude limiting process is not performed on the check-back signal. Support for the change can be found by referring to paragraph 30 of the published application as well as to the claims as previously presented. In such a process the amplitude of a signal is prevented from exceeding a predetermined value. Applicants believe that an amplitude limiting process is well known in the art and that one of ordinary skill in the art is enabled to practice the claimed invention. Claim 40 does not include a similar limitation.

Under the heading “Claim Rejections – 35 USC § 112” on page 2 of the above-identified Office Action, claims 18-24, 26-28, and 30-40 have been rejected as

being indefinite for failing to particularly point out and distinctly claim the subject matter under 35 U.S.C. § 112, second paragraph.

With regard to claim 18, the Examiner stated that “a narrow-band spectral range” is not clear. Applicants believe that the term “narrow-band” is well known in the art and that the term is clear. Nevertheless, the term has been removed from independent claims 18, 23, 26, 27, and 40 in an attempt to obtain allowable claims.

Claim 18, for example, has been amended to specify, “concentrating a constant proportion of a output in a defined frequency range of the check-back signal in a predetermined spectral range”. Similar changes have been made to claims 23, 26, 27, and 40.

However, claim 19 has been amended to specify that the predetermined spectral range is a narrowband spectral range. Applicants believe it is not necessary to specify the exact parameters of the spectral range. The terms, “narrowband” and “wideband” are well known in the art. Applicants believe that one of ordinary skill in the art is very well equipped to determine the meaning of a narrowband spectral range.

The amplitude limiting process has been discussed above and is believed to be definite.

It is accordingly believed that the claims meet the requirements of 35 U.S.C. § 112, first and second paragraphs. The above-noted changes to the claims are provided solely for clarification or cosmetic reasons. The changes are neither provided for overcoming the prior art nor do they narrow the scope of the claim for any reason related to the statutory requirements for a patent.

Under the heading “Claim Rejections – 35 USC § 103” on page 3 of the above-identified Office Action, claims 18-21, 26, and 40 have been rejected as being unpatentable over German Patent No. DE 10046104 A1 to Thanhaeuser under 35 U.S.C. § 103.

Applicants respectfully traverse with regard to claims 19 and 20.

The limitations of claim 19 have been added to claims 18, 23, 26, 27, and 40.

Claim 18 now specifies that a concentration of a constant proportion of the output of the check-back signal is created in the predetermined spectral range by evenly distributing ones and zeros from data of the check-back signal, followed by encoding. Claims 23, 26, 27, and 40 include similar limitations.

Thanhaeuser does not teach that the concentration of a constant proportion of the output of the check-back signal is created in the predetermined spectral range by evenly distributing ones and zeros from data of the check-back signal, followed by encoding.

Claim 19, as amended, specifies that the predetermined spectral range is a narrowband spectral range.

Thanhaeuser does not teach that the concentration of a constant proportion of the output of the check-back signal is created in “a narrowband spectral range” by evenly distributing ones and zeros from data of the check-back signal, followed by encoding.

Claim 20 specifies that scrambling is used to evenly distribute ones and zeros from the data of the check-back signal and then a CMI or RZ encoding is used to create a spectral line.

Thanhaeuser does not teach the defined scrambling.

Under the heading “Claim Rejections – 35 USC § 103” on page 5 of the above-identified Office Action, claims 22-24, 27-28, and 30-39 have been rejected as being unpatentable over German Patent No. DE 10046104 A1 to Thanhaeuser in view of U.S. Publication No. 2003/0072064 A1 to Ohta under 35 U.S.C. § 103.

Even if the teachings of the references were combined, the invention as defined by the rejected claims would not have been suggested for the reasons

given above with regard to the independent claims and the teaching in  
Thanhaeuser.

It is accordingly believed to be clear that none of the references, whether taken alone or in any combination, either show or suggest the features of claims 18, 23, 26, 27, or 40. Claims 18, 23, 26, 27, and 40 are, therefore, believed to be patentable over the art. The dependent claims are believed to be patentable as well because they all are ultimately dependent on claim 18, 23, 26, 27, or 40.

In view of the foregoing, reconsideration and allowance of claims 18-24, 26-28, and 30-40 are solicited.

In the event the Examiner should still find any of the claims to be unpatentable, counsel would appreciate receiving a telephone call so that, if possible, patentable language can be worked out.

Please charge any fees that might be due with respect to Sections 1.16 and 1.17 to the Deposit Account of Lerner Greenberg Sterner LLP, No. 12-1099.

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Respectfully submitted,

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